

H-1B CAP REGISTRATION | FREQUENTLY ASKED QUESTIONS

1. Who is eligible for H-1B nonimmigrant classification?

The H-1B nonimmigrant classification is available to individuals seeking to work in the U.S. in a “specialty occupation” position in which they are qualified. Specialty occupation positions are those that typically require at least a bachelor’s degree in a specialty. The H-1B classification also requires an employer-employee relationship and does not allow for self-employment.

2. What is the H-1B “cap”?

New H-1B visas are numerically limited and are issued on a Fiscal Year (FY) basis. The term “cap” refers to this numerical limit. The current cap is 65,000, with an additional 20,000 for prospective beneficiaries who hold U.S. master’s degrees or higher. The H-1B cap typically impacts employers seeking to hire individuals who are either: (1) in the U.S. in another nonimmigrant category (F-1, J-1, L-1, etc.); (2) outside the U.S. who have not previously held H-1B status; or (3) H-1B nonimmigrants with universities or related not-for-profit research institutes.

3. How do I register for the H-1B cap?

Through 2019 (FY2020), the cap selection process was a mail-in system. Specifically, beginning on April 1 of each year, prospective petitioners mailed in H-1B petitions until USCIS confirmed that it received enough petitions to meet the cap. Typically, the cap was reached during the first five business days of the filing window. USCIS would then do partial data entry, assign cases numbers, and conduct a random audit to determine which cases would be processed and which rejected. These activities took weeks to complete. Under that paradigm, employers were required to submit fully documented petitions, including Labor Condition Applications, supporting documents, and filing fees. This was a tremendous burden and expense for both employers and the USCIS. As of 2020, the cap registration process is now entirely online.

In 2020 (FY2021), USCIS changed its cap selection process from the mail-in system to an online electronic registration system. Within a designated window of about two weeks (minimum of 14 calendar days), prospective petitioners (“registrants”) or their authorized representatives submit cap registrations online via USCIS’s website and pay a small fee for each registration submitted.

- **2022 (FY2023) registration window:** March 1 – March 18
- **2021 (FY2022) registration window:** March 9 – March 25
- **2020 (FY2021) registration window:** March 1 – March 20

After the registration period closes, USCIS randomly selects 65,000 registrations from the pool of submissions. Those with U.S. master’s degrees or higher who were not selected in the first round of selection are then placed into a second round of selection where USCIS randomly selects up to 20,000 submissions. This second round of selection is often referred to as the “Master’s cap.”

Registrants are notified of selection prior to April 1, usually within a few days after the close of registration. For those selected in the lottery, petitioners typically have 90 days to mail in H-1B petitions for selected beneficiaries. If the petition is not filed within the 90-day window, the lottery number is lost. Those that are not selected in the initial round of selections are usually placed on a waitlist in case any of those initially selected fail to submit a full petition within the 90-day timeframe and additional lottery numbers become available. Once USCIS reaches the congressionally mandated cap numbers for that fiscal year, USCIS will issue non-selection notices for any H-1B cap registrations that were not selected.

It is important to understand that to be eligible to file an H-1B petition under the cap, the prospective petitioner must first submit a registration for the beneficiary and the beneficiary must be selected in the registration.

The earliest date H-1B status can begin for a cap-subject beneficiary is October 1 (the beginning of the upcoming fiscal year). In other words, the beneficiary cannot begin work in H-1B status until October 1 at the earliest.

Other important things to note:

- A registrant may only submit one registration per beneficiary per fiscal year. However, more than one registrant (e.g., different prospective employers) may submit a registration for the same beneficiary.
- If lottery numbers remain after the initial cases are processed, USCIS will conduct subsequent lottery selections from the waitlist and new beneficiaries will be identified as eligible to have petitions filed for them.
- Individuals who have already been counted against the cap (i.e., selected) in a prior fiscal year and who have not “reset” their six-year limitation of stay clock are exempt from the cap. Accordingly, current employees and potential new hires already in H-1B status who require H-1B extensions are *not* subject to the cap. Note that individuals on an “Academic” H-1B (petitioner is a university or not-for-profit research entity) are still subject to the cap.
- Except for F-1 students who are eligible for cap-gap extensions (covered below), the filing of an H-1B petition alone does *not* grant the prospective beneficiary an extension of status/work authorization. The prospective beneficiary must continue to maintain independent status/work authorization.

H-1B CAP-SUBJECT PETITIONS | FREQUENTLY ASKED QUESTIONS

For more information on the H-1B nonimmigrant classification, including eligibility, cap registration, and the petition filing process, visit USCIS's website [here](#).

4. What is a “cap-gap” extension?

“Cap-gap” refers to the “gap” in time between the end of a beneficiary’s F-1 status/OPT employment authorization and the beginning of their initial H-1B status (October 1 of the new fiscal year). Current regulations allow qualifying F-1 students to remain in F-1 status and retain their employment authorization during this cap-gap period. Qualification for cap-gap requires: (1) F-1 student with status/OPT expiring before October 1; (2) beneficiary of a cap-subject H-1B petition; and (3) timely filed H-1B petition requesting a change of status.

The cap-gap extension automatically takes effect once the petitioner timely files a request to change status to H-1B on October 1. If the student’s H-1B petition is approved, the student’s cap-gap extension of status/work authorization will continue through September 30. Note that to qualify for the cap-gap extension, the petition must be filed as a change of status (to take effect on October 1) and *not* with consular processing.

The cap-gap extension will automatically terminate if the student’s H-1B petition is denied, withdrawn, revoked, or rejected. In this scenario, the student will typically still have the standard 60-day grace period to depart the U.S., starting from the date of petition termination or their program end date, whichever is later.

For more information on cap-gap extensions, including eligibility, travel, changes in employment, and H-1B denial, visit USCIS's website [here](#).

5. Premium processing or regular processing?

There is no premium processing (PP) option for H1B cap *registrations*; the premium processing option may only be available for the *filing* of the H-1B petition. Note, however, that USCIS may choose to suspend the premium processing service for H-1B filings, as it did in 2020 (FY2021).

Usually, premium processing means that USCIS will either adjudicate a petition or issue a “Request for Evidence” within 15 calendar days of filing. However, in the H-1B cap context, USCIS has in the past put holds on premium processing for several weeks before activating the 15-calendar-day processing time.

Compared to premium processing, cases filed with regular processing will take a variable amount of time depending on USCIS caseloads. In prior years, some regular processing cases remained pending until after the requested effective date of October 1, although this is uncommon.